YEO AH TEE v. LEE CHUAN MEOW

[C. A. (Rose C.J., Tan Ah Tah and Buttrose JJ.) October 3, 1962]

[Singapore — Civil Appeal No. 14 of 1962]

Legal Aid — Statement made by legally-aided person to officers of Legal Aid Bureau — Whether privileged statement — Evidence Ordinance (Cap. 4), ss.127 and 130 — Legal Aid and Advice Ordinance, 1956, s.27(1)(b).

Evidence — Privileged statement — Statement made to Legal Aid Bureau officer — Evidence Ordinance (Cap. 4), s.127.

Statements made by a legally-aided person to an investigator of the Legal Aid Bureau and any evidence with regard to it are privileged under section 127 of the Evidence Ordinance in view of section 27(1)(b) of the Legal Aid and Advice Ordinance, 1956.

The Court of Appeal allowed this appeal holding that the trial Judge was wrong in compelling the plaintiff to disclose a communication which took place between him and the Bureau as the plaintiff did not expressly waive the privilege or consent to its disclosure. A new trial was ordered.

COURT OF APPEAL.

Denis Murphy for the appellant.

K. S. Chung for the respondent.

Cur. Adv. Vult.

Buttrose J. (with whom **Rose C.J.** and **Tan Ah Tah J.** concurred): This was an action for damages for personal injuries suffered by the plaintiff and alleged to have been caused by the negligence of the defendant in the driving of a motor vehicle. In dismissing the plaintiff's claim the learned trial judge said that he accepted the evidence of the defendant and found that he was not negligent in any way.

The substantial point taken on the appeal was the wrongful admission of what was described as a statement alleged to have been made by the plaintiff to an officer of the Legal Aid Bureau, who were at that time acting as his solicitors and also of the evidence of two of its officers in connection therewith in that they were privileged communications.

The position was that on the 22nd November, 1960, the day immediately following the accident the plaintiff was taken to the General Hospital where at about 7 p.m. he made a report of the accident to the police in which he stated that he was cycling along Havelock Road and on arriving at New Bridge Road junction a motor car knocked against his bicycle from the rear and he fell down.

It appeared that on the 19th June, 1961, the plaintiff consulted the Legal Aid Bureau who acted for him at that stage and on the 27th June and 26th July, 1961, the Director of Legal Aid wrote two letters respectively to the defendant alleging, *inter alia*, that the accident occurred as the result of a passenger in the defendant's stationary car opening the rear nearside door and knocking down the plaintiff. Now copies of the reports made to the police by the plaintiff and defendant respectively were received by the Legal Aid Bureau at 9.40 a.m. on the 27th June, 1961, the date of their first letter to the defendant and I think it can be reasonably inferred before it was written.

In the light of the plaintiff's report it is difficult to understand how the matter contained in either of the two letters could have been written. It would on the face of it appear to be based not on the plaintiff's but on the defendant's report. It is, I suppose, conceivably possible that a mistake may have occurred and that some confusion may have arisen over the reports which arrived together as to which was which. It is certainly an odd feature of the case. What is surprising is that the Director of Legal Aid observing, as he should have done, the difference between the plaintiff's report to the police and his statement to the Legal Aid Bureau investigator did not send for the plaintiff and clarify the position before writing the two letters referred to. Be that as it may, however, evidence was given by an investigator at the Legal Aid Bureau that the plaintiff made a statement to him on the 19th June, 1961, in which he, the plaintiff, attributed the accident to people in the defendant's car suddenly opening the door as he came to the side of the car's left back door which knocked him down. He himself made no inquiries into the plaintiff's case and the statement was not signed by the plaintiff. The document, in my view. reads more like notes of an interview than a statement in the generally accepted sense of the term. It appeared that the plaintiff only went to the Legal Aid Bureau on one occasion. A copy of this statement was sent to the plaintiff's new solicitors at their request on the 7th August, 1962, by the Director of Legal Aid Bureau bearing no date and giving no indication as to when it was taken.

The statement is essentially different from the plaintiff's report to the police made the day following the accident and also from his pleadings and from his evidence at the trial none of which make any reference to someone in the defendant's car suddenly opening the rear door as the plaintiff came alongside and knocking him down which is the defendant's case.

The learned trial judge admitted the statement and also the evidence of the two witnesses from the Legal Aid Bureau with regard to it holding that though both the statement and the evidence were privileged the plaintiff had expressly waived the privilege under section 127 of the Evidence Ordinance.

It is provided by section 27(1)(b) of the Legal Aid and Advice Ordinance, 1956 that the privileges attaching to the relationship of client and advocate and solicitor acting in his professional employment shall arise from the relationship between an applicant for legal aid under the Ordinance and the Director and solicitor (if any) to whom the matter is referred.

Both the statement and the evidence with regard to it were, in my opinion, clearly privileged under section 127 of the Evidence Ordinance and the only question is as to whether the plaintiff had expressly waived it as the learned trial judge found he had. The only material evidence on the subject was that of the plaintiff and this is what he said:

> "Yes, I said I did not make a statement at the Legal Aid Bureau. I did not tell them of the matters stated in two letters from Legal Aid Bureau. I cannot explain why the Director should have written in those terms. If I made a statement to the Legal Aid I would not object to it being produced. In fact I did not make one."

On the face of that evidence, I am unable to construe it as an express waiver by the plaintiff of the privilege and indeed, in my view, it falls short of that express consent of the client which is required before any such disclosure can be made. His counsel objected strongly to the evidence and claimed privilege throughout. I must confess I am unable to see how the plaintiff could be said to expressly consent to the production of a statement which he insists he never made. In any event, I do not think the position was ever made clear to him as to what his position was in the matter or what was required of him.

I have the misfortune to disagree with the learned trial judge and I have come to the conclusion that the plaintiff did not expressly waive the privilege as required by section 127 of the Evidence Ordinance. Furthermore, it would, in my view, have been improper in the circumstances of this case for the trial judge to have compelled the plaintiff to disclose the communication which took place between him and the Legal Aid Bureau under section 130 of the Ordinance.

As the wrongful admission of the evidence constituted, in my opinion, a fundamental error, there must be a new trial. This inadmissible evidence had considerable weight with the learned trial judge and I am quite unable to say that had the evidence been excluded he would have come to the same conclusion.

As there is to be a new trial, the less I say about the evidence the better, but in view of the fact that the learned trial judge in dismissing the plaintiff's claim, stated that he accepted the evidence of the defendant that the accident occurred as the result of his passenger opening the rear nearside door of the car and the plaintiff riding into it, I think I should refer briefly to the defendant's evidence. The defendant never saw the accident at all. He said that the first indication he had that an accident had occurred was a bang and he turned round and found the door open. His evidence was that his female passenger in the rear seat left the car after the accident had taken place, that she took a look and said she wanted to leave and that was after knocking against the cyclist. Later in his evidence he said his passenger did not say she was getting out.

Whether that evidence does or does not support the learned trial judge's finding is a matter on which, I think, I should refrain from expressing any opinion but with the exclusion of the statement it stands entirely alone and accordingly requires the most careful scrutiny and consideration.

In the result, therefore, in my judgment, the appeal must be allowed and there must be a new trial before another judge.

As the whole of the first trial was rendered abortive by the inadmissible evidence tendered by the defendant, the proper order as to costs, in my opinion, is that the plaintiff have the costs of this appeal and if he succeeds in the new trial the costs of the first trial, but the defendant is not to have the costs of the first trial in any event. Deposit to appellant.

Appeal allowed. Retrial ordered.

Solicitors: *Murphy & Dunbar; Hilborne, Chung & Co.*

PUBLIC PROSECUTOR v. TENGKU HITAM

[R. Cr. J. (Hashim J.) October 3, 1962]

[Kuala Trengganu — Criminal Revision No. 6 of 1962]

Criminal Law and Procedure — Trial — Jurisdiction of Magistrate — Imposition of sentence that is more than that specified by law — Adequacy of — Procedure to be adopted — Criminal Procedure Code (Cap. 6), s.173(b) — Courts Ordinance, 1948, s.87(2) — When to be invoked.

Before a case is presented in court the prosecution must first satisfy itself whether the maximum punishment which such court can impose is adequate. If it thinks that such sentence is inadequate the case should be brought before the court which has jurisdiction to try it. For example, a case which is ordinarily triable in a Magistrate's court should be brought in that court and should only be brought in the Sessions Court if the prosecution is of the opinion that upon conviction the maximum sentence which can be imposed by a Magistrate is inadequate. The provisions of section 87(2) of the Courts Ordinance, 1948, should only be invoked when the case takes an unexpected turn and the evidence so adduced shows that the maximum sentence that can be imposed by the trial Magistrate is inadequate.

The sentence of 2 years' imprisonment imposed by the learned Magistrate on a charge under section 406 of the Penal Code altered to that of 12 months.

CRIMINAL REVISION.

Hashim J.: I have called for the record of this case.

The accused was charged under section 406 of the Penal Code. He was found guilty, convicted and sentenced by the learned Magistrate to 2 years' imprisonment to be followed by 6 months' police supervision. According to a note made by the learned Magistrate he enhanced the sentence because it was "appropriate and proper".

Under section 87(1)(a) of the Courts Ordinance, 1948, the maximum sentence which a Magistrate can impose is twelve months' imprisonment. Under section 87(2) he may award